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**MINUTES OF THE MEETING OF THE  
BAR - BENCH - MEDIA CONFERENCE**

The third meeting of the Bar-Bench-Media Conference was held on Thursday, October 11, 1990 at 2:00 p.m. at the Blue Coat Inn in Dover. The meeting was opened to the public. Notice of the meeting had been published. No members of the public were in attendance. The members of the conference in attendance were:

**Members from the Print News Media**

Mr. Henry Freeman  
Ms. Judith Roales  
Mr. John H. Taylor  
Ms. Rita K. Farrell  
Mr. James Flood

**Members from the Electronic News Media**

Mr. Allan R. Loudell  
Mr. Michael Sigman  
Mr. Robert A. Mercer  
Ms. Marilyn Buerkle  
Mr. William D. Osborne

**Members from the Bench**

Justice Randy J. Holland  
President Judge Henry duPont Ridgely

**Members from the Bar**

Mary Pat Trostle, Esquire  
Howard M. Handelman, Esquire  
J. Dallas Winslow, Esquire

The meeting was opened by the Chairman, Howard M. Handelman. The minutes of the July 5, 1990 meeting were reviewed and were unanimously approved.

The second agenda item to be discussed was the availability of members of the bench to the news media. Since a number of the judicial members of the conference were not present for the meeting, it was decided to delay discussion of this issue.

Mr. Handelman began discussion of the third agenda item by reading paragraph 2 of the Statement of Principles of the Bar-Bench-Media Declaration. Mr. Handelman stated that he was reluctant to speak to reporters concerning cases. The issue of whether a conversation with a reporter was on or off the record became the focus of discussion. Representatives of the media had differing views as to what off the record meant. Generally, it was felt that an off the record comment by an attorney would remain off the record. However, there was a discussion concerning a Minnesota Supreme Court case that indicated that off the record comments were not always off the record. Justice Holland distributed the relevant sections of the Delaware Lawyers' Rules of Professional Conduct and the Delaware Judges' Code of Judicial Conduct. The Rules and Code set forth lawyers' and judges' responsibilities when commenting on cases within the legal system.

Justice Holland and Mr. Winslow stated that it did not matter whether lawyers' comments were on or off the record that under the Rules of Professional Responsibility a lawyer is responsible for any comments that the lawyer makes. Mr. Handelman indicated that lawyers worry about being misquoted when they are willing to speak on the record and are equally worried about being identified or quoted when they speak off the record. Mr. Loudell said that when a source gives information off the record a reporter will generally try to find another source for the same information who is willing to be quoted. Mr. Mercer said it was a reporter's responsibility to ask questions but that no one has the obligation to answer the

questions. Mr. Freeman stated that a lawyer must clearly state when he is speaking off the record. Mr. Loudell talked about the decisions a reporter must make in deciding whether it is proper to use off the record information. Judge Ridgely indicated that there appeared to be no standard for determining when a comment is off the record.

Ms. Farrell spoke of the need to be able to have judges explain their decisions in cases after they had been released and some time has passed. Justice Holland explained that the opinions speak for themselves. He said judges may talk about administrative procedures but may not talk about individual cases. If a reporter wishes to get procedural information concerning cases, the reporter should talk to the court administrator of the appropriate court. Mr. Handelman noted that judges are not able to respond to stories that appear in the media. Mr. Freeman asked who could respond for a judge; however, this issue was not discussed. It was decided that no change would be made to paragraph 2 of the Statement.

Mr. Handelman read paragraph 3 of the Statement of Principles. Mr. Freeman and Mr. Taylor brought up the juror identification issue and wanted to know if the names of jurors are a matter of public record. Justice Holland directed the conference's attention to paragraph 2 of Section IV on page 5 as giving some direction on this issue. The members talked about moving paragraph 2 of Section IV to Section II as paragraph 4. The conference decided to leave the paragraph in Section IV but also to repeat it in Section II as new paragraph 4. Upon motion and approval of the conference, the

word "released" was deleted from paragraph 2, and the phrase "available upon request" was substituted. Ms. Farrell spoke about the guidelines that judges impart to jurors for talking to the press after a trial is completed. She felt that the courts were directing jurors not to talk to the press after a trial is completed. Judge Ridgely said the judges are only making suggestions to the jurors and that there is no rule prohibiting a juror from talking to the press after a trial is completed. Ms. Farrell asked whether lawyers may talk to jurors after a trial. Justice Holland said lawyers may not question jurors after a trial under the Rules of Professional Responsibility. Mr. Handelman stated that by questioning jurors the press may undermine the jury process by looking behind the decisions the jury made. Judge Ridgely talked about the potential issue of the willingness to serve of potential jurors when they realize that they may be held up to media scrutiny. Mr. Mercer felt that there was an inherent conflict of interest between what the media seeks to learn from jurors about the deliberations and the needs of the judicial system to adjudicate cases. No change was made to paragraph 3.

Mr. Handelman read paragraph 4, 5 and 6 of the Statement of Principles. There was a brief discussion that paragraph 4 imposed specific conditions upon the media while imposing no such conditions on the bar or bench. It was felt that the language of these paragraphs should be amended. There was a motion that Justice Holland redraft paragraph 4, 5 and 6. The motion was seconded and passed.

At the conclusion of this meeting, Mr. Handelman advised the conference that the next scheduled meeting would be on Wednesday, December 5, 1990 at 2:00 p.m. in Wilmington at the office of WHYV TV Channel 12. Any members wishing to submit agenda items for the next meeting should submit said items to Mr. Handelman. Mr. Handelman will prepare an agenda for the meeting and circulate it to the conference. The meeting was adjourned.

Respectfully submitted,

*Mary Pat Thosie*  
*by Stephen D. Tyler*

November 28, 1990

# SUPREME COURT OF DELAWARE

RANDY J. HOLLAND  
Justice

208 COURT HOUSE  
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## M E M O R A N D U M

TO: Bar-Bench-Media Conference

DATE: November 28, 1990

At our last meeting, I was asked to draft a proposal which would constructively combine the thoughts expressed in paragraphs 4, 5 and 6 of the Statement of Principles adopted in 1975.

Paragraph 4 directs the news media to keep several specific points in mind when reporting the news. However, paragraph 1 already encourages the media to use "good judgment" and paragraph 2 encourages the media to adhere to its own ethical standards. Consequently, paragraph 4 appears to be an unnecessary and an incomplete reminder on subjects which are covered generally in paragraphs 1 and 2.

Paragraph 5 contains similar "reminders" for the bench and bar. Both of these groups are also encouraged in paragraphs 1 and 2 to use good judgment and to adhere to their own ethical standards. Again, paragraph 5 appears to be an unnecessary and an incomplete reminder to the bench and the bar on the subjects covered generally in paragraphs 1 and 2.

Paragraph 6 encourages the bench, the bar, and the media to educate themselves on their respective roles in guarding the constitutional rights to a fair trial and freedom of the press.

It is my recommendation that paragraphs 4 and 5 be deleted and paragraph 6 be retained as written. Without paragraphs 4 and 5, the Statement of Principles provides positive statements which encourage the bench, the bar, and the media to be educated about their respective roles in preserving both of the constitutional rights at issue, to use good judgment, and to adhere to their respective ethical standards.

RJH/ck

11/30/90

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